Maryland General Assembly
Department of Legislative Services

Proposed Regulations
Department of Housing and Community Development
(DLS Control No. 20-025)

Overview and Legal and Fiscal Impact

These regulations establish, in accordance with Chapter 482 (House Bill 326) of 2016 and Chapter 211 (Senate Bill 581) of 2019, the policies, procedures, and authorizations for the Community Development Administration in the Department of Housing and Community Development to provide financial assistance for qualified business projects under the administration's business lending program.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies beyond that which was accounted for in the fiscal and policy notes for Chapter 482 of 2016 (House Bill 326) and Chapter 211 of 2019 (Senate Bill 581).

Regulations of COMAR Affected

Department of Housing and Community Development:
Neighborhood Business Development: Business Lending Program:
COMAR 05.13.07.01 through .13

Legal Analysis

Background

The Community Development Administration in the Department of Housing and Community Development issues revenue bonds to raise capital used to make below-market interest rate mortgages. The administration is required, under Title 4, Subtitle 2 of the Housing and Community Development Article, to provide financial assistance for various community development and residential projects, including public purpose projects, energy conservation projects, and special housing facilities. The Maryland Housing Fund (Fund) was created in 1971 as a mortgage insurance program under the Division of Credit Assurance in the department. The Fund maintains existing primary and pool insurance for residential mortgages financed with proceeds from revenue bonds issued by the administration, as well as primary insurance for certain permanent loans by public and private lenders.

Chapter 482 of 2016, a departmental bill, made comprehensive changes to the laws concerning various departmental business lending and neighborhood revitalization programs, including the expansion of the administration's financial assistance mandate to include "business projects" located in priority funding areas. To finance business projects, the administration may purchase or issue securities that are backed by loans or other obligations. The issuance, terms, and conditions of a security issued by the administration may be as the administration finds necessary or desirable for guaranty by the fund, a private entity, or a government-sponsored enterprise. For an analysis of the regulations relating to the issuance of loan insurance and credit enhancement for business projects by the fund, please see DLS Control No. 17-103P.

Chapter 211 of 2019, which established the Opportunity Zone Enhancement Program in the Department of Commerce, expanded the geographic eligibility for businesses to receive financial assistance under a number of State economic development, tax credit, and financing plans, including the administration's business lending program, by adding businesses in eligible opportunity zones. An "eligible opportunity zone" is defined to mean an area designated as a qualified opportunity zone under the Internal Revenue Code that is located in Allegany, Garrett, Somerset, or Wicomico counties.

Summary of Regulations

The regulations add new Chapter .07 to COMAR 05.13 to implement specified provisions of Chapter 482 of 2016 and Chapter 211 of 2019. Regulation .01 of Chapter .07 states that the purpose of the regulations is to prescribe the policies, procedures, and authorizations for the administration to provide financial assistance for eligible business projects. Regulation .02 defines terms for the new chapter, including "business project," which is a project in a priority funding area or eligible enterprise zone that is (1) undertaken by an individual or entity for the purpose of carrying on a business whether or not for profit; or (2) eligible for funding under the Neighborhood Business Development Fund in the department.

Regulation .03 specifies eligibility criteria for recipients of financial assistance, and regulation .04 specifies requirements for eligible business projects. Regulation .05 establishes the terms and conditions of financial assistance, including provisions relating to interest rates and fees, repayment, disbursement of funds, escrow accounts, and appraisals. Regulations .06 and .07 impose other obligations on recipients of financial assistance concerning, respectively, additional insurance requirements and additional documentation and security or collateral conditions. Regulation .08 provides for the content, evaluation, and approval or rejection of applications for financial assistance.

Regulation .09 imposes requirements concerning maintaining books, accounts, and records on applicants, contractors, and subcontractors. Regulation .10 provides for the administration of the lending program for business projects.

Regulation .11 requires an applicant or contractor to comply with all applicable laws regarding discrimination, equal opportunity in employment, housing and credit practices, and drug and alcohol free workplaces. Regulation .12 authorizes the Secretary of Housing and Community Development to waive or vary provisions of the regulations under specified circumstances. Lastly, regulation .13 prohibits an applicant for or a recipient of financial assistance from knowingly making or causing to be made false statements in a document to the department or for the purpose of influencing the action of the department with regard to financial assistance, and imposes specified penalties for a violation of the regulation.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 2-111 of the Housing and Community Development Article as statutory authority for the regulations. Section 2-111 broadly requires the Secretary of Housing and Community Development to review, approve, and disapprove regulations issued by the department. Although not cited by the department, § 3-206 of the Housing and Community Development Article requires the department to adopt reasonable eligibility standards to aid in the financing of "business projects." Title 4, Subtitle 2 governs the general powers and duties of the administration. In response to a suggestion from the Department of Legislative Services, staff for the department has agreed to include these additional citations.

With the addition of § 3-206 and Title 4, Subtitle 2 of the Housing and Community Development Article, this authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

In response to suggestions from the Department of Legislative Services, staff for the department agrees to make the following changes to the regulations (which are reflected in this analysis):

- clarify in the Statement of Purpose that the regulations implement statutory changes pursuant to Chapter 482 of 2016 and Chapter 211 of 2019;

- update the definition of "business project" in Regulation .02 to conform to § 4-223 of the Housing and Community Development Article, as amended by Chapter 211 of 2019;

- change the definition of "program" in Regulation .02 to be consistent with the chapter title, which references the business "lending" program, rather than the business "loan" program; and

- make various technical corrections.

Fiscal Analysis

There is no fiscal impact on State or local agencies beyond that which was accounted for in the fiscal and policy notes for Chapter 482 of 2016 (House Bill 326) and Chapter 211 of 2019 (Senate Bill 581).

Agency Estimate of Projected Fiscal Impact

The department advises that special fund revenues increase from origination fees and loan repayments associated with expanding lending under the program. The department also advises that it will incur some minor administrative costs, but that any such costs will be less than the revenue generated and are already budgeted. The department further advises that local governments will benefit from increased property values and job creation.

The Department of Legislative Services generally disagrees, as the regulations implement provisions of Chapter 482 of 2016 (House Bill 326) and Chapter 211 of 2019 (Senate Bill 581), both of which made changes to the Neighborhood Business Development Program within the department. There is no impact beyond that which has already been accounted for in the fiscal and policy notes for those bills. The fiscal and policy note for House Bill 326 of 2016 indicated that, while additional State funding could be provided to support the expanded program, the department advised that it planned to use existing resources to implement the bill. The fiscal and policy note also indicated that pay-as-you-go special fund revenues may increase due to fee provisions. With respect to local governments, the fiscal and policy note indicated that the bill was not anticipated to materially affect local government operations or finances. The fiscal and policy note for Senate Bill 581 of 2019 indicated that altering the geographic eligibility requirements for the program does not materially affect State finances or operations. The fiscal and policy note also discussed potential local revenue impacts, but the bill addressed multiple other programs that are not affected by the regulations.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have a meaningful economic impact on small businesses in the State by expanding the availability of financing for small business that is not otherwise available from the conventional financing sector. While the Department of Legislative Services concurs that there may be a meaningful impact on small businesses within certain regions, any such impact has already been accounted for in the fiscal and policy notes for House Bill 326 of 2016 and Senate Bill 581 of 2019.

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